



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2004

Mr. Harold Willard
Police Legal Advisor
Lubbock Police Department
P.O. Box 2000
Lubbock, Texas 79457

OR2004-2445

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198349.

The Lubbock Police Department (the "department") received a request for "any calls or reports made at [a specified address]" since 1998. You state that some responsive information has been provided to the requestor. You claim, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. The information submitted as Exhibit B was used or developed in an investigation of child abuse. Thus, we find that Exhibit B is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that Exhibit B is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

Next, you contend that the information submitted as Exhibit D is confidential pursuant to section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The report submitted as Exhibit D involves a runaway, conduct which is within the scope of section 58.007. *See* Fam. Code § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return”). It does not appear that any of the exceptions in section 58.007 apply; therefore, we find that the information in Exhibit D is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Finally, section 552.101 also encompasses the doctrine of common-law privacy. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101

encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have marked the information in the document submitted as Exhibit C that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold Exhibit D under section 552.101 in conjunction with section 58.007 of the Family Code. We have marked the information in Exhibit C that must be withheld under section 552.101 in conjunction with common-law privacy. The remainder of Exhibit C must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 198349

Enc: Submitted documents

c: Ms. Mannette Lawler
312 East 18th Street
Wolfforth, Texas 79382
(w/o enclosures)